

Farm Service Agency, USDA

§ 772.2

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

§ 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

§ 771.15 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

772.1 Policy.

772.2 Abbreviations and definitions.

772.3 Compliance.

772.4 Environmental requirements.

772.5 Security maintenance.

772.6 Subordination of security.

772.7 Leasing minor program loan security.

772.8 Sale or exchange of security property.

772.9 Releases.

772.10 Transfer and assumption—AMP loans.

772.11 Transfer and assumption—IMP loans.

772.12 Graduation.

772.13 Delinquent account servicing.

772.14 Reamortization of AMP loans.

772.15 Protective advances.

772.16 Liquidation.

772.17 Equal Opportunity and non-discrimination requirements.

772.18 Exception authority.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

SOURCE: 68 FR 69949, Dec. 16, 2003, unless otherwise noted.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and Definitions.

(a) Abbreviations.

AMP Association-Type Minor Program loan;

CFR Code of Federal Regulations;

FO Farm Ownership Loan;

FSA Farm Service Agency;

IMP Individual-Type Minor Program loan;

OL Operating Loan;

USDA United States Department of Agriculture.

(b) Definitions.

Association-Type Minor Program loans (AMP): Loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

§ 772.3

Graduation: The requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Individual-type Minor Program loans (IMP): Non-Farm Enterprise or Recreation loans to individuals.

Member: Any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA

Review official: An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

§ 772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to federally conducted programs contained in 7 CFR parts 15d and 15e.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

7 CFR Ch. VII (1–1–05 Edition)

(c) *Frequency and timing.* Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

(d) *Violations.* If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of § 772.16 of this part.

§ 772.4 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.

§ 772.5 Security maintenance.

(a) *General.* Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement and promissory note.

(b) *Security inspection.* The Agency will inspect real estate that is security for a Minor Program loan at least once every 3 years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

(c) *Violations.* If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

(1) For chattel security, service the account according to 7 part 1962, subpart A. If any normal income security as defined in that subpart secures a

Farm Service Agency, USDA

§ 772.8

Minor Program loan, the reporting, approval and release provisions in that subpart shall apply.

(2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.

(3) For real estate security for IMP loans, service the account according to 7 CFR part 1965, subpart A.

§ 772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

(1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower," for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. "Controlled substance," for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the

Agency application form that it, and its members if an entity, have not been convicted of such a crime.

(b) *Application.* To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal prepared in accordance with § 761.7 of this chapter, if the request is for a subordination of more than \$10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

§ 772.7 Leasing minor program loan security.

(a) *Eligibility.* The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and

(6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application.* The borrower must submit a written request for Agency consent to lease the property.

§ 772.8 Sale or exchange of security property.

(a) For AMP loans.

§ 772.9

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

(i) The property is sold for market value based on a current appraisal prepared in accordance with § 761.7 of this chapter.

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the following non-discrimination covenant:

The property described herein was obtained or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, or for so long as the purchaser owns it, whichever is later.

(iii) The remaining security for the loan is adequate or will not change after the transaction.

(iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

(i) The Agency will obtain a lien on the property acquired in the exchange;

(ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;

(iii) The AMP loan will be as adequately secured after the transaction as before; and

(iv) It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan ob-

7 CFR Ch. VII (1-1-05 Edition)

jectives and purposes, as determined by the Agency.

(b) For IMP loans.

(1) A sale or exchange of chattel that is serving as security is governed by 7 CFR part 1962, subpart A.

(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by 7 CFR part 1965, subpart A.

[68 FR 69949, Dec. 16, 2003, as amended at 69 FR 18741, Apr. 8, 2004]

§ 772.9 Releases.

(a) *Security.* Minor Program liens may be released when:

(1) The debt is paid in full;

(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or

(3) An exchange in accordance with § 772.8 has been concluded.

(b) *Borrower liability.* The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with § 772.10 in conjunction with a transfer and assumption.

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900-904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.

[68 FR 69949, Dec. 16, 2003, as amended at 69 FR 7679, Feb. 19, 2004]

Farm Service Agency, USDA

§ 772.12

§ 772.10 Transfer and assumption—AMP loans.

(a) *Eligibility.* The Agency may approve transfers and assumptions of AMP loans when:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan;

(2) The transfer will not harm the Government or adversely affect the Agency's security position;

(3) The transferee will continue with the original purpose of the loan;

(4) The transferee will assume an amount at least equal to the present market value of the loan security;

(5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;

(6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and

(7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.

(b) *Withdrawal.* Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

(1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;

(2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and

(3) The transfer will not adversely affect collection of the AMP loan.

(c) *Requesting a transfer and assumption.* The transferor/borrower and transferee/applicant must submit:

(1) The written consent of any other lienholder, if applicable.

(2) A current balance sheet and cash flow statement.

(d) *Terms.* The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and as-

sumption will be approved by the Agency.

(e) *Release of liability.* Transferors may be released from liability with respect to an AMP loan by the Agency when:

(1) The full amount of the loan is assumed; or

(2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with § 772.9(c).

§ 772.11 Transfer and assumption—IMP loans.

Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 1962, subpart A, for chattel secured loans and 7 CFR part 1965, subpart A, for real estate secured loans. Any remaining transferor liability will be serviced in accordance with § 772.9(c) of this subpart.

§ 772.12 Graduation.

(a) *General.* This section only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.

(b) *Graduation reviews.* Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.

(1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.

(2) All IMP borrowers classified as "commercial" or "standard" in accordance with 7 CFR part 1951, subpart F, shall be reviewed at least every 2 years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.

(c) *Criteria.* Borrowers must graduate from the Minor Programs as follows:

(1) Borrowers with IMP loans that are classified as "commercial" or "standard" must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable

§ 772.13

amount of additional time to apply for refinancing.

(2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower's financial condition has significantly improved.

§ 772.13 Delinquent account servicing.

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account according to § 772.16.

(b) *IMP loans.* Delinquent IMP borrowers will be serviced according to 7 CFR part 1951, subpart S, and parts 3 and 1951, subpart C, concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).

§ 772.14 Reamortization of AMP loans.

The Agency may approve reamortization of AMP loans provided:

(a) There is no extension of the final maturity date of the loan;

(b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;

(c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and

(d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control.

§ 772.15 Protective advances.

(a) The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

§ 772.16 Liquidation.

When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in § 772.13, or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 1955, subpart A. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.

§ 772.17 Equal opportunity and non-discrimination requirements.

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in 7 CFR 1910.2, and the Department's civil rights policy in 7 CFR part 15d.

§ 772.18 Exception authority.

Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.

PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

773.1 Introduction.

773.2 Definitions.

773.3 Appeals.

773.4-773.5 [Reserved]

773.6 Eligibility requirements.

773.7 Loan uses.

773.8 Limitations.